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OFFICE OF THE GENERAL COUNSEL

MEMORANDUM

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TO: Chief, Dockets Division

MAR 10 1993

FROM: Associate General Counsel, Litigation Division

SUBJECT: James L. Melcher, et al. v. FCC & USA, Nos. 93-1110 through 93-1137, 93-1139 through 93-1150, 93-1152 and 93-1154. ~~Filing of forty two (42)~~ new Petitions for Review in the United States Court of Appeals for the District of Columbia Circuit

DATE: March 8, 1993

Docket No(s). CC Docket No. 92-297

File No(s). RM-7872, RM-7722 and PP-22

This is to advise you that on February 8, 1993, James L. Melcher, et al., filed with the United States Court of Appeals for the District of Columbia Circuit a:

X Section 402(a) Petition for Review
_____ Section 402(b) Notice of Appeal

of the following FCC decision: Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration, 8 FCC Rcd 557 (1993). Petitioners challenge the NPR that proposes a redesignation of use of the 28 GHz band from point-to-point microwave common carrier service to a local multipoint distribution service.

Due to a change in the Communications Act, it will not be necessary to notify the parties of this filing.

The Court has docketed these cases as Nos. 93-1110 through 93-1137, 93-1139 through 93-1150, 93-1152 and 93-1154 and the attorney assigned to handle the litigation of these cases is Sue Ann Kanter.


Daniel M. Armstrong

cc: General Counsel
Office of Public Affairs
Shepard's Citations

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FEB 08 1993

**CLERK OF THE UNITED
STATES COURT OF APPEALS**

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

JAMES L. MELCHER

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION AND UNITED STATES
OF AMERICA

Respondents,

United States Court of Appeals
For the District of Columbia Circuit

FILED FEB 08 1993

RON GARVIN
CLERK

93-1110

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MAR 03 REC'D

PETITION FOR REVIEW

OFFICE OF GENERAL COUNSEL

Pursuant to Rule 15 of the Federal Rules of Appellate Procedure and Section 402 of the Communications Act, 47 U.S.C. §402, James L. Melcher hereby petitions the Court for review of the Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration ("Order") released by the Federal Communications Commission in Docket No. CC92-297 on January 8, 1993.

In said Order, the Commission concluded that the 28 GHz band should be redesignated to accommodate local multipoint technology that would provide consumers with additional options for video programming distribution, wideband video data, and other telecommunications services. In proposing such redesignation of spectrum, the Commission said that, while the 28 GHz band has been available for point-to-point microwave radio common carrier use

since 1959, very little, if any, use of this frequency band has been made since 1959.

At the time of said Order, petitioner had pending before the Commission applications to provide local multipoint distribution service for the respective service areas encompassing San Jose, California; and Fort Worth, Texas; accompanied by petitions for waiver of the current rules.

By said Order, the Commission denied petitioner's pending waiver applications. Petitioner intends to rely on the following reasons for this appeal:

(1) The Commission denied petitioner's pending waiver applications summarily, without benefit of the Commission's proposed rulemaking to amend the current Common Carrier Point-to-Point Microwave Service rules;

(2) The Commission erroneously found that petitioner's waiver applications did not satisfy the standard for a waiver;

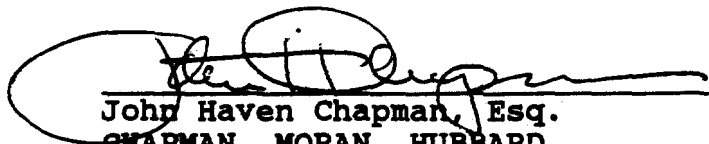
(3) Contrary to the Commission's finding, the petitioner's waiver applications do satisfy the standard for a waiver;

(4) The petitioner's waiver applications are consistent with the minimal technical rules which the Commission proposes to adopt in redesignating the 28 GHz band so that video and other telecommunication services may be accommodated;

(5) Since the 28 GHz band is not being utilized as was found by the Commission, grant of petitioner's waiver applications would not be detrimental to "assigned users" as the Commission has erroneously and inconsistently found; and

(6) The Commission's denial of the petitioner's waiver applications is arbitrary, capricious and an abuse of discretion, not in accordance with law, and otherwise violates the Administrative Procedure Act, 5 U.S.C. §706.

Respectfully submitted,



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Attorneys for JAMES L. MELCHER

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MAR 05 REC'D

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

OFFICE OF GENERAL COUNSEL
VIDEO COMMUNICATIONS CORPORATION,)
Petitioner,)
v.)
FEDERAL COMMUNICATIONS)
COMMISSION AND UNITED STATES)
OF AMERICA)
Respondents,)

United States Court of Appeals
For the District of Columbia Circuit

FILED FEB 08 1993

RON GARVIN
CLERK

93-1111

PETITION FOR REVIEW

Pursuant to Rule 15 of the Federal Rules of Appellate Procedure and Section 402 of the Communications Act, 47 U.S.C. §402, Video Communications Corporation hereby petitions the Court for review of the Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration ("Order") released by the Federal Communications Commission in Docket No. CC92-297 on January 8, 1993.

In said Order, the Commission concluded that the 28 GHz band should be redesignated to accommodate local multipoint technology that would provide consumers with additional options for video programming distribution, wideband video data, and other telecommunications services. In proposing such redesignation of spectrum, the Commission said that, while the 28 GHz band has been available for point-to-point microwave radio common carrier use

since 1959, very little, if any, use of this frequency band has been made since 1959.

At the time of said Order, petitioner had pending before the Commission applications to provide local multipoint distribution service for the respective service areas encompassing Baltimore, Maryland; Pittsburgh, Pennsylvania; Columbus, Ohio; Buffalo, New York; and Charlotte, North Carolina; accompanied by petitions for waiver of the current rules.

By said Order, the Commission denied petitioner's pending waiver applications. Petitioner intends to rely on the following reasons for this appeal:

(1) The Commission denied petitioner's pending waiver applications summarily, without benefit of the Commission's proposed rulemaking to amend the current Common Carrier Point-to-Point Microwave Service rules;

(2) The Commission erroneously found that petitioner's waiver applications did not satisfy the standard for a waiver;

(3) Contrary to the Commission's finding, the petitioner's waiver applications do satisfy the standard for a waiver;

(4) The petitioner's waiver applications are consistent with the minimal technical rules which the Commission proposes to adopt in redesignating the 28 GHz band so that video and other telecommunication services may be accommodated;

(5) Since the 28 GHz band is not being utilized as was found by the Commission, grant of petitioner's waiver applications would not be detrimental to "assigned users" as the Commission has erroneously and inconsistently found; and

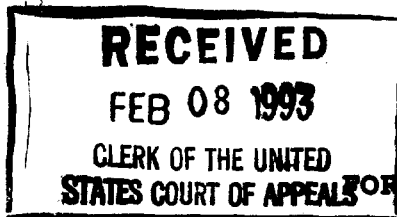
(6) The Commission's denial of the petitioner's waiver applications is arbitrary, capricious and an abuse of discretion, not in accordance with law, and otherwise violates the Administrative Procedure Act, 5 U.S.C. §706.

Respectfully submitted,



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Attorneys for Video Communications
Corporation



UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

HARRY A. HALL

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION AND UNITED STATES
OF AMERICA

Respondents,

United States Court of Appeals
For the District of Columbia Circuit

FILED FEB 08 1993

RON GARVIN
CLERK

93-1112

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MAR 03 REC'D

PETITION FOR REVIEW

OFFICE OF GENERAL COUNSEL

Pursuant to Rule 15 of the Federal Rules of Appellate Procedure and Section 402 of the Communications Act, 47 U.S.C. §402, Harry A. Hall hereby petitions the Court for review of the Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration ("Order") released by the Federal Communications Commission in Docket No. CC92-297 on January 8, 1993.

In said Order, the Commission concluded that the 28 GHz band should be redesignated to accommodate local multipoint technology that would provide consumers with additional options for video programming distribution, wideband video data, and other telecommunications services. In proposing such redesignation of spectrum, the Commission said that, while the 28 GHz band has been available for point-to-point microwave radio common carrier use

since 1959, very little, if any, use of this frequency band has been made since 1959.

At the time of said Order, petitioner had pending before the Commission applications to provide local multipoint distribution service for the respective service areas encompassing Harrisburg, Pennsylvania; accompanied by petitions for waiver of the current rules.

By said Order, the Commission denied petitioner's pending waiver applications. Petitioner intends to rely on the following reasons for this appeal:

(1) The Commission denied petitioner's pending waiver applications summarily, without benefit of the Commission's proposed rulemaking to amend the current Common Carrier Point-to-Point Microwave Service rules;

(2) The Commission erroneously found that petitioner's waiver applications did not satisfy the standard for a waiver;

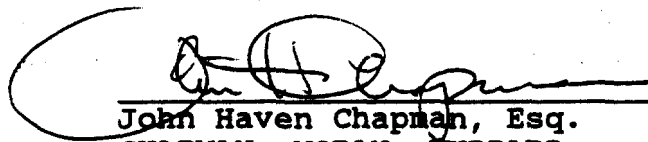
(3) Contrary to the Commission's finding, the petitioner's waiver applications do satisfy the standard for a waiver;

(4) The petitioner's waiver applications are consistent with the minimal technical rules which the Commission proposes to adopt in redesignating the 28 GHz band so that video and other telecommunication services may be accommodated;

(5) Since the 28 GHz band is not being utilized as was found by the Commission, grant of petitioner's waiver applications would not be detrimental to "assigned users" as the Commission has erroneously and inconsistently found; and

(6) The Commission's denial of the petitioner's waiver applications is arbitrary, capricious and an abuse of discretion, not in accordance with law, and otherwise violates the Administrative Procedure Act, 5 U.S.C. §706.

Respectfully submitted,



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Attorneys for Harry A. Hall

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

ALLIANCE ASSOCIATES

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION AND UNITED STATES
OF AMERICA

Respondents,

United States Court of Appeals
For the District of Columbia Circuit

FILED FEB 08 1993

RON GARVIN
CLERK

93-1113

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MAR 05 REC'D

PETITION FOR REVIEW
OFFICE OF GENERAL COUNSEL

Pursuant to Rule 15 of the Federal Rules of Appellate Procedure and Section 402 of the Communications Act, 47 U.S.C. §402, Alliance Associates hereby petitions the Court for review of the Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration ("Order") released by the Federal Communications Commission in Docket No. CC92-297 on January 8, 1993.

In said Order, the Commission concluded that the 28 GHz band should be redesignated to accommodate local multipoint technology that would provide consumers with additional options for video programming distribution, wideband video data, and other telecommunications services. In proposing such redesignation of spectrum, the Commission said that, while the 28 GHz band has been available for point-to-point microwave radio common carrier use

since 1959, very little, if any, use of this frequency band has been made since 1959.

At the time of said Order, petitioner had pending before the Commission applications to provide local multipoint distribution service for the respective service areas encompassing Providence, Rhode Island, accompanied by petitions for waiver of the current rules.

By said Order, the Commission denied petitioner's pending waiver applications. Petitioner intends to rely on the following reasons for this appeal:

(1) The Commission denied petitioner's pending waiver applications summarily, without benefit of the Commission's proposed rulemaking to amend the current Common Carrier Point-to-Point Microwave Service rules;

(2) The Commission erroneously found that petitioner's waiver applications did not satisfy the standard for a waiver;

(3) Contrary to the Commission's finding, the petitioner's waiver applications do satisfy the standard for a waiver;

(4) The petitioner's waiver applications are consistent with the minimal technical rules which the Commission proposes to adopt in redesignating the 28 GHz band so that video and other telecommunication services may be accommodated;

(5) Since the 28 GHz band is not being utilized as was found by the Commission, grant of petitioner's waiver applications would not be detrimental to "assigned users" as the Commission has erroneously and inconsistently found; and

(6) The Commission's denial of the petitioner's waiver applications is arbitrary, capricious and an abuse of discretion, not in accordance with law, and otherwise violates the Administrative Procedure Act, 5 U.S.C. §706.

Respectfully submitted,



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Attorneys for Alliance Associates

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FEB 08 1993

CLERK OF THE UNITED
STATES COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

FREDERICK M. PEYSER

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION AND UNITED STATES
OF AMERICA

Respondents,

United States Court of Appeals
For the District of Columbia Circuit

FILED FEB 08 1993

RON GARVIN
CLERK

93-1114

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FILED & REC'D

PETITION FOR REVIEW

OFFICE OF GENERAL COUNSEL

Pursuant to Rule 15 of the Federal Rules of Appellate Procedure and Section 402 of the Communications Act, 47 U.S.C. §402, Frederick M. Peyser hereby petitions the Court for review of the Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration ("Order") released by the Federal Communications Commission in Docket No. CC92-297 on January 8, 1993.

In said Order, the Commission concluded that the 28 GHz band should be redesignated to accommodate local multipoint technology that would provide consumers with additional options for video programming distribution, wideband video data, and other telecommunications services. In proposing such redesignation of spectrum, the Commission said that, while the 28 GHz band has been available for point-to-point microwave radio common carrier use

since 1959, very little, if any, use of this frequency band has been made since 1959.

At the time of said Order, petitioner had pending before the Commission applications to provide local multipoint distribution service for the respective service areas encompassing Knoxville, Tennessee; Mobile, Alabama; Augusta, Georgia; Daytona Beach, Florida; and Lexington, Kentucky; accompanied by petitions for waiver of the current rules.

By said Order, the Commission denied petitioner's pending waiver applications. Petitioner intends to rely on the following reasons for this appeal:

(1) The Commission denied petitioner's pending waiver applications summarily, without benefit of the Commission's proposed rulemaking to amend the current Common Carrier Point-to-Point Microwave Service rules;

(2) The Commission erroneously found that petitioner's waiver applications did not satisfy the standard for a waiver;

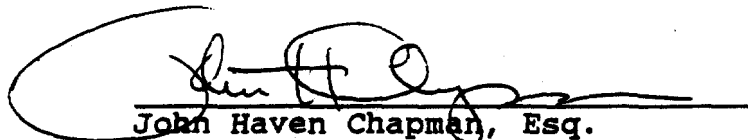
(3) Contrary to the Commission's finding, the petitioner's waiver applications do satisfy the standard for a waiver;

(4) The petitioner's waiver applications are consistent with the minimal technical rules which the Commission proposes to adopt in redesignating the 28 GHz band so that video and other telecommunication services may be accommodated;

(5) Since the 28 GHz band is not being utilized as was found by the Commission, grant of petitioner's waiver applications would not be detrimental to "assigned users" as the Commission has erroneously and inconsistently found; and

(6) The Commission's denial of the petitioner's waiver applications is arbitrary, capricious and an abuse of discretion, not in accordance with law, and otherwise violates the Administrative Procedure Act, 5 U.S.C. §706.

Respectfully submitted,



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Attorneys for Frederick M. Peyser

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

BMW ASSOCIATES

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION AND UNITED STATES
OF AMERICA

Respondents,

United States Court of Appeals
For the District of Columbia Circuit

FILED FEB 08 1993

RON GARVIN
CLERK

**93-1115
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MAR 05 REC'D

**OFFICE OF GENERAL COUNSEL
PETITION FOR REVIEW**

Pursuant to Rule 15 of the Federal Rules of Appellate Procedure and Section 402 of the Communications Act, 47 U.S.C. §402, BMW Associates hereby petitions the Court for review of the Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration ("Order") released by the Federal Communications Commission in Docket No. CC92-297 on January 8, 1993.

In said Order, the Commission concluded that the 28 GHz band should be redesignated to accommodate local multipoint technology that would provide consumers with additional options for video programming distribution, wideband video data, and other telecommunications services. In proposing such redesignation of spectrum, the Commission said that, while the 28 GHz band has been available for point-to-point microwave radio common carrier use

since 1959, very little, if any, use of this frequency band has been made since 1959.

At the time of said Order, petitioner had pending before the Commission applications to provide local multipoint distribution service for the respective service areas encompassing Melbourne, Florida; Fort Myers, Florida; and Sarasota, Florida; accompanied by petitions for waiver of the current rules.

By said Order, the Commission denied petitioner's pending waiver applications. Petitioner intends to rely on the following reasons for this appeal:

(1) The Commission denied petitioner's pending waiver applications summarily, without benefit of the Commission's proposed rulemaking to amend the current Common Carrier Point-to-Point Microwave Service rules;

(2) The Commission erroneously found that petitioner's waiver applications did not satisfy the standard for a waiver;


(3) Contrary to the Commission's finding, the petitioner's waiver applications do satisfy the standard for a waiver;

(4) The petitioner's waiver applications are consistent with the minimal technical rules which the Commission proposes to adopt in redesignating the 28 GHz band so that video and other telecommunication services may be accommodated;

(5) Since the 28 GHz band is not being utilized as was found by the Commission, grant of petitioner's waiver applications would not be detrimental to "assigned users" as the Commission has erroneously and inconsistently found; and

(6) The Commission's denial of the petitioner's waiver applications is arbitrary, capricious and an abuse of discretion, not in accordance with law, and otherwise violates the Administrative Procedure Act, 5 U.S.C. §706.

Respectfully submitted,



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Attorneys for BMW Associates

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FEB 08 1993

**CLERK OF THE UNITED
STATES COURT OF APPEALS**

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

R&R TELECOMMUNICATION PARTNERS)

Petitioner,)

v.)

FEDERAL COMMUNICATIONS)
COMMISSION AND UNITED STATES)
OF AMERICA)

Respondents,)

United States Court of Appeals
For the District of Columbia Circuit

FILED FEB 08 1993

93-1116

RON GARVIN
CLERK

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MAP 00 REC'D

PETITION FOR REVIEW OFFICE OF GENERAL COUNSEL

Pursuant to Rule 15 of the Federal Rules of Appellate Procedure and Section 402 of the Communications Act, 47 U.S.C. §402, R&R Telecommunication Partners hereby petitions the Court for review of the Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration ("Order") released by the Federal Communications Commission in Docket No. CC92-297 on January 8, 1993.

In said Order, the Commission concluded that the 28 GHz band should be redesignated to accommodate local multipoint technology that would provide consumers with additional options for video programming distribution, wideband video data, and other telecommunications services. In proposing such redesignation of spectrum, the Commission said that, while the 28 GHz band has been available for point-to-point microwave radio common carrier use

since 1959, very little, if any, use of this frequency band has been made since 1959.

At the time of said Order, petitioner had pending before the Commission applications to provide local multipoint distribution service for the respective service areas encompassing San Jose, California; Akron, Ohio; San Diego, California; Minneapolis, Minnesota; St. Louis, Missouri; Pittsburgh, Pennsylvania; Providence, Rhode Island; Nashville, Tennessee; Dayton, Ohio; and Albany, New York; and accompanied by petitions for waiver of the current rules.

By said Order, the Commission denied petitioner's pending waiver applications. Petitioner intends to rely on the following reasons for this appeal:

(1) The Commission denied petitioner's pending waiver applications summarily, without benefit of the Commission's proposed rulemaking to amend the current Common Carrier Point-to-Point Microwave Service rules;

(2) The Commission erroneously found that petitioner's waiver applications did not satisfy the standard for a waiver;

(3) Contrary to the Commission's finding, the petitioner's waiver applications do satisfy the standard for a waiver;

(4) The petitioner's waiver applications are consistent with the minimal technical rules which the Commission proposes to adopt in redesignating the 28 GHz band so that video and other telecommunication services may be accommodated;

(5) Since the 28 GHz band is not being utilized as was found by the Commission, grant of petitioner's waiver applications would not be detrimental to "assigned users" as the Commission has erroneously and inconsistently found; and

(6) The Commission's denial of the petitioner's waiver applications is arbitrary, capricious and an abuse of discretion, not in accordance with law, and otherwise violates the Administrative Procedure Act, 5 U.S.C. §706.

Respectfully submitted,



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Attorneys for R&R Telecommunica-
tion Partners

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STEVEN A. BIRNBAUM

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION AND UNITED STATES
OF AMERICA

Respondents,

United States Court of Appeals
For the District of Columbia Circuit

FILED FEB 08 1993

**RON GARVIN
CLERK**

**93-1117
RECEIVED**

1993 FEB 08 REC'D

PETITION FOR REVIEW OFFICE OF GENERAL COUNSEL

Pursuant to Rule 15 of the Federal Rules of Appellate Procedure and Section 402 of the Communications Act, 47 U.S.C. §402, Steven A. Birnbaum hereby petitions the Court for review of the Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration ("Order") released by the Federal Communications Commission in Docket No. CC92-297 on January 8, 1993.

In said Order, the Commission concluded that the 28 GHz band should be redesignated to accommodate local multipoint technology that would provide consumers with additional options for video programming distribution, wideband video data, and other telecommunications services. In proposing such redesignation of spectrum, the Commission said that, while the 28 GHz band has been available for point-to-point microwave radio common carrier use

since 1959, very little, if any, use of this frequency band has been made since 1959.

At the time of said Order, petitioner had pending before the Commission applications to provide local multipoint distribution service for the respective service areas encompassing Oxnard, California; Las Vegas, Nevada; Fresno, California; Tucson, Arizona; and Bakersfield, California; accompanied by petitions for waiver of the current rules.

By said Order, the Commission denied petitioner's pending waiver applications. Petitioner intends to rely on the following reasons for this appeal:

(1) The Commission denied petitioner's pending waiver applications summarily, without benefit of the Commission's proposed rulemaking to amend the current Common Carrier Point-to-Point Microwave Service rules;

(2) The Commission erroneously found that petitioner's waiver applications did not satisfy the standard for a waiver;

(3) Contrary to the Commission's finding, the petitioner's waiver applications do satisfy the standard for a waiver;

(4) The petitioner's waiver applications are consistent with the minimal technical rules which the Commission proposes to adopt in redesignating the 28 GHz band so that video and other telecommunication services may be accommodated;

(5) Since the 28 GHz band is not being utilized as was found by the Commission, grant of petitioner's waiver applications would not be detrimental to "assigned users" as the Commission has erroneously and inconsistently found; and

(6) The Commission's denial of the petitioner's waiver applications is arbitrary, capricious and an abuse of discretion, not in accordance with law, and otherwise violates the Administrative Procedure Act, 5 U.S.C. §706.

Respectfully submitted,



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